IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)

CP (IB)3420/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

KM FINCORP LLP

…Applicant / Operational Creditor

Versus

MS SUPPORT SERVICES
PVT. LTD. & Anr.

…Respondent / Corporate Debtor

Order Pronounced On: 30/11/2021

Coram:
DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

Ms. SUMITA PURKAYASTHA,
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

KM Fincorp LLP,
35/19, 2nd Floor, East Patel Nagar,
Delhi-110008

…Applicant / Operational Creditor

Versus

1. **MS Support Services Pvt. Ltd.**
   4th Floor, Khasra 378,
   Sri SAAI Complex, Kapashera,
   New Delhi – 110037

…Corporate Debtor

2. **Ministry of Corporate Affairs**
   Government of India
   'A' Wing Shashtri Bhawan Garage
   No. 14, Dr. Rajendra Prasad Road
   New Delhi- 110001

…Respondent

Present:
For the Applicant: Mr. Rajeev Raizada, Adv.
Ms. Geeta Luthra, Adv.

For the Respondent: Mr. Sanjay Mann, Adv.

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

1. The instant Application is filed by KM Fincorp LLP (for brevity '**Applicant**') through Mr. Kapil Marwah authorized representative and managing partner of the Applicant company under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process (**CIRP**) against M/s MS Support Services Pvt. Ltd. (for brevity '**Corporate Debtor**').

2. The Applicant is an LLP, registered with Registrar of Companies, Delhi with LLPIN No. AAA-1728 and its registered office is located at 35/19, 2nd Floor, East Patel Nagar, Delhi-110008. The Applicant is a financial service professional firm.

3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956 on 22.06.2009, duly registered with Registrar of Companies, Delhi with CIN: U74900DL2009PTC191452 and its registered office is located at 4th Floor, Khasra 378, Sri SAAI Complex, Kapashera, New Delhi – 110037. The authorized share capital of the Corporate Debtor is Rs. 25,00,000/- and Issued, Subscribed and Paid-up share

capital of the company is Rs.12,00,000/-. The Corporate Debtor is engaged in the business of Manpower Management Services.

4. It is the case of the Applicant that on the basis of oral agreement, Corporate Debtor had availed debt syndication and financial advisory services during 7.03.2019 to 30.09.2019. As per services rendered by Applicant, the Axis Bank had sanctioned credit facility of Rs. 15,00,00,000/- on 27.08.2019 to the Corporate Debtor. The Applicant raised Tax Invoice No. 001/KMFIN/2019-2020 dated 01.10.2019 of Rs 18,40,800/- which was mailed to the Corporate Debtor on 01.10.2019. The Corporate Debtor had made part payment of Rs. 6,00,000/- and Rs. 2,00,000/- through RTGS and NEFT on 03.10.2019 and 19.10.2019.

5. The Applicant made several requests to the Corporate Debtor for payment of remaining amount of Rs. 10,40,800/- but all went in vain. Thus, Applicant issued demand notice as per Section 8 of Code on 30.10.2019 through post and email. The tracking report is filed, which mentions 'Item Delivery Confirmed'. The Corporate Debtor replied to the demand notice through email dated 06.11.2019 denying the claim and asked the Applicant to send copy of agreement if any. Thereafter the Applicant again sent email dated 13.11.2019 to the Corporate Debtor. The said email of Applicant was replied by the Corporate Debtor vide email dated 15.11.2019 and 28.11.2019 whereby it is stated that in March 2019 Corporate Debtor agreed to hire

service from Applicant for three years commencing from 01.04.2019 and it was also agreed that the Applicant shall render its service only after formal work order is placed. It is also stated that the amount of Rs. 8,00,000/- was paid as an advance on request of the Applicant and while making payment Applicant had assured to provide its service from October 2019. Thus, the Corporate Debtor had asked to return Rs. 8,00,000/- paid as an advance within 15 days.

6. Thereafter the Applicant filed the present Application under Section 9 of Code. As per Form 5 Part IV the total debt outstanding is Rs. 10,40,800/- and the date on which default occurred is mentioned as 19.10.2019.

7. The Corporate Debtor has filed its reply and in addition to the contentions made in its reply to demand notice, the Corporate Debtor made following submissions:

    a) That the Applicant as a goodwill gesture facilitated the Corporate Debtor to get financial credit sanctioned from the Axis Bank. Therefore, shared all email communications between the Corporate Debtor and Axis Bank. The sanction letter sent by Axis Bank to Corporate Debtor via email dated 27.08.2019 was forwarded to the Applicant, shows that there was no contribution of Applicant in obtaining the credit facility. Thus, the Tax Invoice No.

001/KMFIN/2019-2020 raised by the Applicant is false and fictitious and the same was denied through various emails.

b) That even if it is assumed that the Tax Invoice No. 001/KMFIN/2019-2020 raised by Applicant is correct then the present Application is not maintainable for invoice raised for future period, as the invoice no. shows that it is raised for year 2019-2020.

c) When the Corporate Debtor raised a concern in a telephonic conversation on 06.10.2019, Mr. Kapil Marwah said the invoice was issued by mistake and assured that an email will be sent cancelling the same. However, no cancelling email was sent rather within 30 days Applicant had issued demand notice.

8. The Applicants submits in its rejoinder that the Corporate Debtor had engaged Applicant to facilitate switch over from their existing banker, Bank of Maharashtra and arranging takeover and enhancement of credit facilities by another bank. For the said purpose on being asked by the Applicant, Corporate Debtor through email dated 07.03.2019 sent the list of documents required for enhancement of credit facility and thereafter submitted documents to the Applicant, which proves the existence of assignment to the Applicant. Copy of emails are annexed. The Applicant further submits that prior to issuance of demand notice, the Corporate Debtor had never denied /

refuted the Tax Invoice rather a partial payment was made by the Corporate Debtor.

9. The Applicant submitted in written arguments that in email dated 28.11.2019, the Corporate Debtor had not referred to any voucher and the contention that the vouchers were issued is raised for the first time in reply. Thus, such contention is an afterthought and purported vouchers are false and fabricated. The other arguments are similar to contention raised in rejoinder.

10. Heard submissions, liberty was granted to file a written submission. The Corporate Debtor had filed its written submission and submitted the following:

    a) The Corporate Debtor had never issued any authorization in favor of Applicant to represent it before any authority or bank. Also, there is no mention of arranging of loan from Axis Bank in the invoice.
    b) The contention of the Applicant that it is providing financial services is contrary to law prescribed under the Code as the financial service provider is the person engaged on the business of providing financial services in terms of authorization granted by financial service regulator. No document is placed on record to establish the same.
    c) In none of the communication between the Applicant and the Corporate Debtor placed on record by the Applicant there is any

reference of financial service or the Corporate Debtor is agreeing to pay any amount to the Applicant.

d) The accounts of the Corporate Debtor are subject to audit and it cannot make any payment without a payment voucher. The payment vouchers of Rs. 8,00,000/- annexed with the Reply prima facie proves that the payment was made towards advance for service for a period of three years and not for invoice dated 01.10.2019.

11. The date of default is mentioned as 19.10.2019, the date of last payment by the Corporate Debtor. The instant Application is filed in December 2019. Hence, the Application is not time barred and is filed within the period of limitation.

12. The registered office of the Corporate Debtor is situated in Delhi. Therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application.

13. On perusal of the records it is noted that the tax invoice dated 01.10.2019 is attached with email dated 01.10.2019 but the Applicant has failed to annex the said invoice with the Application. However, the Corporate Debtor has nowhere denied the contention of raising of Tax Invoice dated 01.10.2019. On reading of the email conversations filed by the Applicant it is observed that the Corporate Debtor has been sharing various documents with the Applicant and the subject of some emails are 'DOCS REQUIRED FOR

LOAN PROPOSAL'. Also, the Corporate Debtor has failed to establish that the Applicant had provided the service as a goodwill gesture. The payment voucher annexed by the Corporate Debtor is an internal document lacking an acknowledgement by the Applicant. The Corporate Debtor has not filed any documentary evidence to show that it raised any concern against the tax invoice dated 01.10.2019 before issuance of demand notice. On the contrary they had paid an amount Rs. 8,00,000/- after raising of invoice. It is only after Section 8 notice Respondent started creating dispute but during availing the service from the Applicant there is no dispute raised with respect to the services. Even after raising the invoice there is not a single email with respect to amount raised or services rendered by the Applicant.

14. In view of the foregoing, we are of the view that the Corporate Debtor has failed to pay invoice amount for the service availed from the Applicant. The Corporate Debtor has tried to create sham dispute to save the company from rigors of the Code. The Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd versus Kirusa Software Pvt. Ltd has held that *the dispute needs to be genuine and it is important to separate the grain from the chaff and reject the spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exist in fact and is not spurious,*

hypothetical or illusory, the adjudicating authority has to reject the application.

15. In compliance of Section 9 (3) (c) the Applicant has filed a bank statement for the period from 01.10.2019 to 31.10.2019 showing no payment of unpaid operational debt by the corporate debtor.

16. The Applicant has not proposed the name Interim Resolution Professional (IRP), therefore this Bench appoints Mr. Sanjay Kumar having Registration Number IBBI/IPA-001/IP-P019226/2020-2021/13025 (email: is present on behalf of the.kumarsanjay@gmail.com, Address: D131/2, Chattarpur Extention, Near Baba Balaknath Mandir, South International Capital Teritory of Delhi- 110074), as the Interim Resolution Professional subject to condition that no disciplinary proceedings are pending against him. The IRP is required to file consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 within a period of one week from this order.

17. As a consequence of the above discussion Application being complete is admitted in terms of Section 9(5) of Code and moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under Section 14(1)(a) to (d).

18. The said IRP shall act strictly in compliance with the provisions of Code. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 7 days from the date of this order.

19. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of Code all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

20. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.
Application is disposed of in terms of above order.

SD/-
Ms. SUMITA PURKAYASTHA
MEMBER (TECHNICAL)

SD/-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)